

145

Notice of Allowability	Application No.	Applicant(s)	
	09/810,523	MINOBE ET AL.	
	Examiner	Art Unit	
	Thong Q. Nguyen	2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment of 8/22/06 and Interview of 9/1/06.
2. ☒ The allowed claim(s) is/are 3-5, 7-12, 14-33 and 36-37 which are renumbered as claims 1-31.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

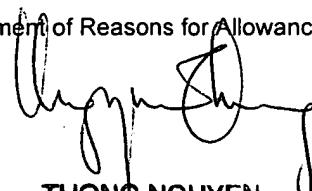
* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| <ol style="list-style-type: none">1. <input type="checkbox"/> Notice of References Cited (PTO-892)2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none">5. <input type="checkbox"/> Notice of Informal Patent Application6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>9/1/06</u>.7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance9. <input type="checkbox"/> Other _____ |
|--|---|


THONG NGUYEN
PRIMARY EXAMINER

DETAILED ACTION

Response to Amendment

1. The present Office action is made in response to the amendment filed on 8/22/2006. It is noted that in the amendment, applicant has amended claims 2-3, 7, 13-14, 18-21, 23, 26, 28, 32-33, 36 and 37 and canceled claims 1 and 6. The remaining claims 2-5, 7-33 and 36-37 are examined in this Office action.

EXAMINER'S AMENDMENT

2. An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on 9/5/2006, applicant's representative, Laura Moskowitz, has requested an extension of time for three (3) MONTHS and authorized the Director to charge Deposit Account No. 19-4880 the required fee of \$570.00 (Note that a fee of \$450.00 for extension of two months has been paid by applicant on 8/22/2006) for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In the claims:

CANCELED CLAIMS 2 AND 13.

Allowable Subject Matter

3. Claims 3-5, 7-12, 14-33 and 36-37 are allowed.
4. The following is an examiner's statement of reasons for allowance:
 - a) The device as claimed in each of independent claims 3, 14, 18, 26, 32, 33, 36 and 37 is patentable with respect to the prior art, in particular, the U.S. Patent Nos. 5,305,139 and 5,684,626 by the limitations related to the phase plate or the spatial filter or the polarization disposed at a position of a diffraction image plane, and the objective lens is adapted to be focused on either one of the diffraction image plane and the sample. It is noted that while the use of an illuminating system having optics for focusing illuminating light onto a converging point, a sample disposed between the illuminating system and the converging point, and an objective lens disposed after the converging point is disclosed in the mentioned Patents; however, the cited Patents do not disclose the feature related to the phase plate or the spatial filter disposed at a position of a diffraction image plane which is orthogonal to the optical axis of the illuminating light and includes a converging point for selectively blocking a part of the illuminating light transmitted through a sample or to change the polarization features of the light beam on the sample, and the objective lens is adapted to be focused on either one of the diffraction image plane and the sample.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

Art Unit: 2872

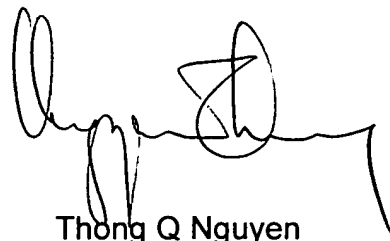
accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q. Nguyen whose telephone number is (571) 272-2316. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A. Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Thong Q. Nguyen', with a stylized flourish at the end.

Thong Q Nguyen
Primary Examiner
Art Unit 2872